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COURT OF APPEALS TAKES STEPS TO ENHANCE CJA REPRESENTATION

BOSTON (March 13, 2003) – The 1st U.S. Circuit Court of Appeals has approved several policy changes aimed at enhancing training opportunities for private attorneys representing indigent federal criminal defendants on appeal under the Criminal Justice Act, expanding the number of qualified lawyers on the court's CJA panel, and streamlining the compensation process.

The policy revisions are the result of a five-month court-initiated review of the system of providing and compensating appellate counsel for the indigent under the Criminal Justice Act of 1964. That legislation permits the court to appoint a private attorney to represent a financially eligible criminal defendant, although at a rate less than what is typically paid to retained counsel. The Court of Appeals maintains a panel of attorneys willing to accept CJA appellate appointments.

The review was conducted by a CJA Appellate Panel Study Committee, led by Court of Appeals Judge Kermit V. Lipez and organized into two subcommittees – one focused on qualifications and screening, the other on education and training. Responding to the subcommittees' reports, the court has approved the following measures, with the goal of promoting "a broad-based panel of able attorneys dedicated to effective representation," Circuit Executive Gary Wente said.

- * Court sponsorship of an ongoing one-day training program on the "nuts and bolts" of doing a federal criminal appeal, to be offered in three locations convenient for practitioners in Maine/New Hampshire, Massachusetts/Rhode Island and Puerto Rico;

- * Wide distribution of a revised application form that elicits more detailed background information from prospective CJA appellate panel attorneys;

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- * Establishment of an advisory committee to review completed forms and make recommendations to the court, both as to a reconstituted panel to be put in place by the fall and on an annual basis thereafter;

- * Appointment of panel members to three-year staggered terms, with the expectation that attorneys typically will be reappointed so as to maintain a pool of experienced CJA appellate lawyers; and

- * Implementation of a centralized voucher-review system to expedite and improve the compensation process, with the understanding that attorneys will be advised in advance of any proposed reduction in the requested amount and given an opportunity to respond prior to a final determination by a judge.

"It is anticipated that the primary effect of these new measures, some of which have already been put in place, will be to attract new talent to the CJA panel rather than replace people already serving on the panel," Wente said. He added, "We are grateful to the members of the Bar who worked so closely with the court to develop these important reforms."

For additional information on the policy changes, please contact Circuit Executive Gary Wente at (617) 748-9613.

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CJA Press Release Back-up Piece

Under the Sixth Amendment of the United States Constitution, criminal defendants have the right to assistance of counsel in their defense. However, not every defendant can afford an attorney. The Criminal Justice Act of 1964 ("CJA") put in a place a federal program for providing and compensating counsel for indigent defendants accused of federal crimes. The goal was to diminish the role that poverty plays in the criminal justice system. Under the CJA, the court can appoint a private attorney to represent a financially eligible criminal defendant, though at a rate below that typically paid to retained counsel. According to a recent report prepared by the Vera Institute of Justice, more than 40 percent of federal criminal defendants who are financially eligible for government-funded lawyers are represented by private attorneys appointed under the CJA.

The First Circuit Court of Appeals maintains a panel of attorneys willing to accept appellate appointments under the CJA, and the court has an ongoing interest in assessing the effectiveness of circuit-wide efforts to promote high quality representation. Recently, members of the criminal defense bar and an appellate representative of the Maine United States Attorney's office approached the court with a number of excellent suggestions for expanding the number of qualified attorneys on the panel, providing court-sponsored education, and streamlining the process of compensation.

The court formed a CJA Appellate Panel Study Committee under the leadership of Judge Lipez composed of representatives from each district within the circuit, the two Federal Public Defenders in this circuit, and the appellate representative of the Maine United States Attorney's office. The committee members included David Beneman, Esq.; Peter Krupp, Esq.; Edward Roy, Esq.; David Bownes, Esq.; Manuel San Juan, Esq.; Charles Rankin, Esq.; Federal Public Defender Joseph Laws; Federal Public Defender Owen Walker; and Assistant United States Attorney Margaret McGaughey. Two subcommittees--a qualifications and screening subcommittee and an education and training subcommittee--reported back to the court.

In response to the subcommittees' reports, the court has approved a number of policy changes. These new measures, described below, should assist the court in its continuing efforts to promote a broad-based panel of able attorneys dedicated to effective representation. Some of the new measures, including those related to streamlining the process of compensation, have already been put in place.

First, the court will sponsor an ongoing one-day training program to be put on in three different locations: one location convenient to practitioners in Maine and New Hampshire, a second location convenient to practitioners in Massachusetts and Rhode Island, and a third location in Puerto Rico. The emphasis of the program will be on procedure--i.e., the nuts and bolts of doing a criminal appeal--on the theory that such a program would be useful to a young lawyer but also helpful to a more experienced lawyer wanting to brush up. The program will supplement existing educational opportunities; the main job of providing education remains a function of the various bar associations in the circuit.

Second, the court will revise the form completed by attorneys interested in being on the CJA appellate panel to provide an opportunity for more detailed background information. These forms will be widely-distributed through a variety of sources. They will also be distributed to current panel members, who will be strongly encouraged to maintain continued interest in service on the panel.

Third, an advisory committee--composed of members of the court staff, two attorneys from each district within the circuit, and a representative from each of the two Federal Public Defender offices in this circuit--will be established to review completed forms and make recommendations to the court. This should assist the court in identifying any persons who should be encouraged to undertake training before being appointed to the panel.

Fourth, panel members will be appointed for staggered terms of three years. In order to maintain a substantial body of experienced appellate attorneys, there will be a presumption that attorneys will be reappointed. However, panel members will continue to serve at the pleasure of the court, and there will be no guarantee of reappointment.

Fifth, the court has already taken several steps to expedite and improve the processing of compensation vouchers. Among other things, the court has established a centralized review system for vouchers in the Office of the Circuit Executive. All vouchers that require approval by the Court of Appeals will be reviewed first by Circuit Executive Gary Wentz or Deputy Circuit Executive Susan Krueger. If they anticipate recommending a reduction in the requested amount, the attorney will be advised of the reasons for the proposed reduction and given an opportunity to respond prior to a final determination by a judge.

Although the court will reconstitute the CJA appellate panel, it is anticipated that the primary effect of the new measures, including the training program, will be to attract new talent rather than replace attorneys already serving on the panel. The court will retain its discretion, in the interests of justice, to appoint an attorney not on the formal panel to represent an indigent defendant.

The manner of implementation of these new measures, and some of the details, remain to be worked out. Further, the court will monitor the effectiveness of the measures and make additional changes, if appropriate. In the meantime, we have all benefitted enormously from the initiative of members of the bar, both defense and prosecution, seeking to enhance the quality of criminal defense appellate representation.